

## Judicial Leadership to Ensure Sound Permanency Decisions for Children in Foster Care: Practical Guidelines for Juvenile and Family Courts

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Juvenile and family courts play the leading role in ensuring right and timely placements of foster children with loving, permanent families. Many judges have responded to this challenge to lead with strength and conviction. In September 2005, more than 350 judicial leaders attended a national summit on this topic, “Justice for Children: Changing Lives by Changing Systems,” sponsored by the National Center for State Courts. Participants included delegations from all fifty states, except hurricane-ravaged Louisiana, with state chief justices heading more than twenty of the delegations.

America’s vulnerable foster children, who number more than a half-million, have been removed from their families for their own protection, through no fault of their own. They deserve America’s best efforts to ensure their safety, permanence, and well-being in loving families. As the legal authorities overseeing the process that decides the placement of these children, juvenile and family court judges have the key responsibility for ensuring that America fulfills its obligations to these young citizens in need.

To begin with, juvenile and family court judges must in their own hearts and minds have compassion towards the children in their charge, a strong sense of urgency to meet their family needs in a timely way, and a relentless insistence that all involved in the process serve the children well. The juvenile and family court judge’s role is more comprehensive than that of other judges. She must promote collaboration and cooperation throughout the state child welfare and court systems, and create and oversee a plan of action that ensures each child’s safety, permanence, and well-being.

In 2003, The Pew Charitable Trusts formed a commission, the Pew Commission on Children in Foster Care, to study the problem of children languishing in foster care and to make related recommendations. The Commission issued its report in 2004, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, which highlighted, in part, the need for judicial leadership in order to improve court performance and decrease the amount of time children spend in foster care. The Commission stated:

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Courts are responsible for ensuring that children's rights to safety, permanence, and well-being are met in a timely and complete manner. ... State judicial leadership should ensure accountability by every court for improved outcomes for children and to inform decisions about allocating resources across the court system. ... If the top people in the system model collaboration with executive branch agencies, then there is an expectation that productive ties between local courts and child welfare agencies will be the norm, not the exception. Court leadership can send a powerful message regarding the court system's accountability for children in public custody.<sup>1</sup>

Children in foster care deserve dedicated judicial leadership throughout the state court system, from supreme court chief justice to individual

juvenile and family court judges. This brief focuses on the leadership role of juvenile and family court judges in providing right and timely placements for foster children. NCFA interviewed three experienced judges, who have boldly and compassionately led their courtrooms to produce positive results for foster children. NCFA is indebted to the Honorable Nancy Salyers, the Honorable Stephen Rideout, and the Honorable Richard FitzGerald for their invaluable insights and contributions to this brief and for their being models of juvenile and family court leadership in serving foster children.<sup>‡</sup>

## Judicial Leadership in Setting Case Goals and in Permanency Planning

Perhaps the most important decision the juvenile and family court judge makes is the determination of the appropriate case goal and

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1. The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care* (2004): 17, 34, 46. The report can be found at <http://pewfostercare.org/docs/index.php?DocID=41>.

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2. Under federal law, there are two additional permanency options: placement with a fit and willing relative and placement in another permanent planned living arrangement." This article does not discuss issues pertaining to these two ways to find permanency other than to say that, with respect to "placement in another permanent planned living arrangement," the state must document to the court a compelling reason why none of the other permanency options is in the child's best interest. (*Adoption and Safe Families Act of 1997 (ASFA)*, Public Law 89, 105th Cong., 1st sess. (November 19, 1997): §302).

permanency plan for any given child – reunification, adoption, or guardianship.<sup>2</sup> Constitutional protections for parents justly require judges to be very careful in terminating parental rights, but the child’s right to safety, permanence, and well-being is even more important. The federal Adoption and Safe Families Act of 1997 (ASFA), as well as state laws, have established appropriate exceptions to the assumption of family reunification as the case goal of first resort.<sup>3</sup> In the interests of children, judges should be realistic and timely in their assessments of parents’ ability to rehabilitate themselves sufficiently to parent their children. More so in the past, prior to ASFA, but still a problem today, is an excessive commitment to family preservation, on the part of some judges, even when there is no real family to preserve. Parental rights must be highly respected, but judges should not allow them to doom children to unsafe and abusive homes.

Every state has enacted statutes that establish criteria for removing a child from his or her parents and the conditions that must be met before terminating parental rights. Congress has also enacted laws relevant to establishing a permanency plan, including circumstances in which reunification efforts are not required. For this reason, judges must be well-versed in relevant statutes to understand the matters over which state legislatures and Congress have prescribed decisions and results, and those over which judges may exercise their own discretion.

When determining case goals and permanency plans, a family court judge must always engage in “child-focused decision-making” and weigh the potential harms and benefits to the child. He must consider the nature of the abuse

or neglect, the capacity of the child’s parents to change their behavior, and the likelihood that parents will make the prescribed changes in a timely fashion. What is the parents’ overall attitude toward demonstrating fitness to parent? Are they taking the problem seriously? Are they amenable to treatment? If a parent is amenable to treatment, and there is realistic hope that the parent can be sufficiently rehabilitated within one year to provide the child safety, permanence, and well-being, then reunification should be attempted.

In the majority of cases, reunification will likely be the initial case goal, and parents will be allowed time to address the reasons that the state removed their child from their care. According to the U.S. Department of Health and Human Services, the case goals for children in foster care nationwide, as of September 2003, were:

• Reunification	48%
• Adoption	20%
• Living With Other Relative	5%
• Guardianship	3%
• Long Term Foster Care	8%
• Emancipation	6%
• Case Goal Not Established	10% <sup>4</sup>

There are, however, egregious cases in which efforts to reunify are not required. In these cases, courts should take immediate steps to terminate parental rights and find another permanent placement for the child, preferably adoption, perhaps by relatives. These situations, as prescribed by ASFA, include:

- When the child has suffered chronic abuse, sexual abuse, torture, or abandonment by the parent.

3. *Adoption and Safe Families Act of 1997 (ASFA)*, Public Law 89, 105th Cong., 1st sess. (November 19, 1997).

4. U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *The AFCARS Report: Preliminary AFCARS FY 2003 Estimates as of April 2005 (10)*, available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report10.pdf](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report10.pdf).

- When the parent has committed the murder or voluntary manslaughter of another child of the parent, or assisted someone in the act.
- When the parent has seriously injured the child or another child of the parent.
- When the parent's parental rights to another child have been terminated involuntarily.<sup>5</sup>

In general, judges may exercise their discretion if and when not to pursue reunification of a child with his parents. However, ASFA places limits on the ability of courts to continue to pursue reunification, based

on the length of time a child has been in foster care. If a child has remained in foster care 15 out of the most recent 22 months, reunification efforts should, in most cases, be discontinued, termination of parental rights initiated, and steps be taken to place the child in an adoptive home.<sup>6</sup> ASFA identifies three exceptions to this

“15/22 rule”: when the child is being cared for by a relative, when the state has failed to provide services to the parent to facilitate the safe return of the child to the home, and for a “compelling reason” that makes termination of parental rights contrary to the best interests of the child.<sup>7</sup>

In order to use the “compelling reason” exception, the state must document in the case plan the exact nature of the circumstances that make termination of parental rights not in the child's best interests. Similarly, judges should document in the court findings the precise

nature of the “compelling circumstances” that make it appropriate not to pursue termination of parental rights and how these circumstances apply to the particular child whose case is under review. Judges should apply this last exception narrowly. Unfortunately, some judges, driven by an excessive commitment to preserving the biological family, may make inappropriate exceptions to the 15/22 rule and allow the child to languish too long in foster care with an unrealistic and perhaps unsafe plan for reunification.

*Perhaps the most important decision the juvenile and family court judge makes is the determination of the appropriate permanency plan for any given child – reunification, adoption, or guardianship.*

Because adoption provides children permanent parents and family, adoption should be the preferred permanency plan to be considered after reunification. Before considering guardianship, the court should make a specific determination that neither reunification nor adoption is possible or preferable for a particular child. Guardianship is clearly better for children

than long-term foster care; and many guardians either treat their wards as long-term family members, or are actual relatives of the child. But unlike adoption, which establishes parent-child relationships that have no end, guardianship generally ends at age 18 and does not give the child a legally recognized “mom” or “dad.”

Judges should prepare for the possibility of adoption or another permanent placement besides reunification by requiring the state to engage in concurrent planning. The practice of concurrent planning allows the child welfare system to iden-

5. ASFA, §101(a)(15)(D).

6. ASFA, §103(a)(3)(E).

7. Ibid.

tify alternatives to reunification and take preliminary steps to enable swift permanency for the child should reunification be eliminated as a possibility. Caseworkers can do this by placing a child with a foster family willing to adopt him should reunification fail, for example, or by educating the child, parents, and relatives about the possibility of adoption. This ensures that the permanency process will be well underway if the court rejects reunification as the case goal.

There are limited scenarios in which adoption is not the appropriate permanency plan and legal guardianship may be preferable for foster children. As found by the Pew Commission, these include instances of older children who do not wish to be adopted and whose consent is required under state law; children whose relatives would like to care for them but will not consider adoption, because adoption requires termination of their relative's – the child's biological parent's – parental rights; children belonging to cultures that disapprove of termination of parental rights, as is the case with Native American cultures; and children whose biological parents want to maintain parental rights and are fit to parent but for physical, emotional, or cognitive limitations.<sup>8</sup> Only in these relatively uncommon circumstances should guardianship be preferred to adoption.

## Timeline and Pivotal Points in the Permanency Decision-making Process

The length of time that a child remains in foster care and the rightness of the permanent placement depend largely on how efficiently

and effectively courts facilitate case review, which is largely a function of the timeliness and appropriateness of judicial decisions. While there is no step in this process that is without significance, there are some stages that are pivotal in determining how soon a child will exit foster care. Judicial leadership is the key to ensuring that sound and timely decisions are made throughout this process. It is vital that those who care about foster children are familiar with how the permanency decision-making process should work, so they can monitor the system's performance and fulfill their roles as advocates for children.

**Removal or emergency custody hearing:** In general, to remove a child from his or her parents' care, the state must first file a petition for removal and request an emergency custody hearing.<sup>9</sup> There are exceptions when there is a risk of immediate harm to the child, in which case the child will be removed before the state seeks court approval. An emergency custody hearing should be held promptly in all cases. Best practice dictates that it occur within 72 hours following the child's removal.<sup>10</sup> In most jurisdictions, the emergency custody hearing must be held within 48 to 72 hours after removal.

During this initial proceeding, the judge must determine whether removal from the home was justified and if there is an urgent and immediate necessity that prevents the child from returning home during the interim period before the adjudicatory hearing.<sup>11</sup> Typically this requires a finding that the removal was not due simply to financial circumstances, but to some

8. The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care* (2004): 21-22. The report can be found at <http://pewfostercare.org/docs/index.php?DocID=41>

9. States may call the initial hearing by other names, such as a "shelter hearing," depending on the legislature's choice of language.

10. Publication Development Committee, Victims Abuse Project, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* (Reno, Nevada: National Council of Juvenile and Family Court Judges, 1995), 30.

11. A child's removal from the home requires a judicial determination that it would be "contrary to the welfare" of the child to remain in the home. The "contrary to the welfare" finding must be made at the initial hearing (45 C.F.R. §1356.21(c)). Failure to do so makes the child ineligible for Title IV-E foster care payments for the duration of that stay in foster care.



specific and present threat to the child's safety or well-being.

At the removal or emergency custody hearing, judges should document whether the state has made reasonable efforts to avoid separation of the child and family to no avail, or that there are no steps that can be taken at that precise moment that would enable the child to remain safely in the home.<sup>12</sup> If a judge decides that the child cannot remain safely in his home during the interim period, he should consider the possibility of parent and sibling visitation, and document related parameters, such as the frequency, location, and supervision.

It is also important that judges take immediate steps to ensure early identification of and notice to any missing parents, putative fathers, or any other individuals who may be entitled to notice of or input in future hearings. Failure to provide proper notice leads to court hearing delays and unnecessary appeals, which can be major impediments to timely permanency. Judges should encourage parents and any other respondents to obtain legal representation. In all cases, family court judges should ensure appointment of legal counsel for those parties who qualify for pro bono representation.

**Adjudicatory hearing:** The adjudicatory hearing, which is similar to a trial, is the first real fact-finding opportunity for the judge. The burden of proof at the adjudicatory hearing is

higher than it was at the emergency custody hearing. At the adjudicatory hearing, the state must build its case and prove, in accordance with the standard of proof, that the abuse or neglect of the child has in fact occurred.

State law dictates how soon the adjudicatory hearing must be held once a child has been removed from the home. Best practice requires that it be held within 60 days of removal.<sup>13</sup> In setting a hearing date, judges need to allow sufficient time for the parties to gather pertinent information, but not delay the hearing date longer than necessary. Following this hearing, the child will likely be either returned to the home or temporarily placed elsewhere while the parent or parents work toward reunification. In either case, slow adjudication results in delayed permanency for the child, and 60 days from removal ought to be the upper limit for conducting this hearing.

**Disposition hearing:** At the disposition hearing, the judge formally establishes the case goal for the child. Barring the exceptions specified by ASFA, the case goal determination at this stage is usually reunification, and appropriately so, when there is a realistic likelihood that the parent(s) can responsibly parent, given some training, rehabilitation, and/or counseling. But when the dangerous circumstances specified by ASFA exist, courts should move directly to termination of parental rights and the case goal of adoption.

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12. Within 60 days of the child's removal from the home, a judge must issue an order as to whether reasonable efforts have been undertaken to prevent removal and separation of the child (45 C.F.R. §1356.21(b)(1)). Failure to do so makes the child ineligible for Title IV-E foster care payments for the duration of that stay in foster care.

13. Publication Development Committee, Victims Abuse Project, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, 47.

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If the judge determines the appropriate case goal to be reunification, she will order at this hearing a plan to address the specific problems that necessitated state intervention, including services to be provided to the parents, such as substance abuse rehabilitation and testing, parenting classes, anger management training, or other counseling or instruction. The court should set strict participation requirements that have a realistic prospect of enabling parents to achieve successful reunification. The judge should make clear to the parents that participation in ordered programs is mandatory, and that failure to cooperate will jeopardize reunification and lead to the termination of their parental rights.

The disposition hearing is also the stage at which the court decides who will have custody and control over the child until permanency is finalized.<sup>14</sup> For children who remain in an out-of-home placement, judicial leaders address matters pertaining to their well-being, such as the appropriateness of continuing parent and sibling visitation, or the possibility of allowing these visitations if they were not approved or permitted by the judge at the removal hearing. Judges should continually revisit the appropriateness of parent and sibling visitation while the child is in foster care in order to help the child maintain ties with the biological family, so long as contact promotes the child's well-being.

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14. While the adjudicatory hearing's purpose is restricted to a ruling regarding whether abuse or neglect occurred, and not to the implications of the finding, judges must sometimes make preliminary decisions about the "next steps" at the adjudicatory hearing, and not wait until disposition of the case. For instance, courts may need to decide where the child will stay in the interim between adjudication and disposition.

## Judicial Steps to Permanency for Children in Foster Care

Juvenile and family court judges lead the following process in making permanency decisions for children in foster care:

**Removal or emergency custody hearing:** Held immediately prior to removal, or within 72 hours of removal, to determine whether there is sufficient cause for removing the child from the home and where the child will reside until the adjudicatory hearing.

**Adjudicatory hearing:** Held as soon as possible after removal, no later than 60 days after removal, to decide whether the state has proved that abuse or neglect of the child has occurred.

**Disposition hearing:** Held no more than 30 days after the adjudicatory hearing, to establish the case goal, assign temporary custody of the child, and plan ways to eliminate the abuse or neglect, such as through programs for parents.

**Review hearing(s):** Held regularly after disposition, to determine whether the parties are following court orders and how parents are progressing toward possible reunification.

**Permanency hearing:** By federal standards held no later than 12 months after removal, sooner when possible or required as in some states, to decide the permanency plan for the child: reunification, adoption, guardianship, or long-term foster care.

**Permanency review hearings:** Held regularly after the permanency decision, until permanency is finalized, to monitor and ensure overall compliance with the permanency plan.

Judges should schedule the disposition hearing at the adjudicatory hearing to ensure prompt setting of case goals. In some cases, the disposition hearing immediately follows the adjudicatory hearing. Best practice dictates that the disposition hearing occur within no more than 30 days of adjudication, as appropriate case planning often cannot take place until disposition.<sup>15</sup> The federal requirement that the initial permanency hearing be held within 12 months of state intervention makes it critical to establish case goals early, so that parents have time to make progress in their rehabilitation efforts toward reunification, or so that the state agency can identify other permanent placement possibilities as soon as possible.

#### **Review hearing(s):**

Regular review hearings should take place following the disposition hearing to determine whether the parties are adhering to the court's orders. If a judge does not monitor the parties through periodic pre-permanency hearings, it is more likely that caseworkers will delay referring the parents to needed services, or fail to make other required, reasonable efforts in a timely manner that would facilitate reunification. It is also more likely that problems with the foster care placement will go unnoticed or that the parents will delay utilizing needed, available services.

Within six months of the removal of the child, the parents should be able to demonstrate that clear progress has been made. Post-disposition review hearings help courts to determine

earlier the likelihood of parents achieving reunification. For example, if a review hearing reveals that a drug-dependent mother does not participate in mandated substance abuse counseling or tests positive for ongoing drug use, the court should reconsider the appropriateness of reunification as the case goal.

**Permanency hearing:** At the permanency hearing, the court must determine the permanency plan: reunification, adoption, guardianship, or some other permanent placement. In accordance with ASFA, courts must hold this hearing within 12 months of the child's removal

from the home.<sup>16</sup> Judges are not required, however, to wait the full year to make the permanency decision. They should be open to making an earlier determination if the child's interests in a particular permanency decision are clear. In the interests of timely permanence for foster children, some state laws

require the permanency decision within six months of the child's removal. With rare exceptions, the 12 months allowed by ASFA should be the upper limit for determining the permanency plan.

When judges decide reunification is appropriate, they should document in detail how the parents' actions or behaviors that resulted in removal of the child have changed, including the services utilized, and why there is no longer a concern for the child's health, safety, and well-being. When adoption is the permanency decision, the judge should include in his court order

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15. Publication Development Committee, Victims Abuse Project, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, 55.

16. ASFA, §302



the reasons why reunification is not possible in this case. Similarly, if legal guardianship is the permanency decision, the judge should make findings, which he documents in the court order, as to why neither reunification nor adoption is appropriate. A judge cannot approve permanency through another “permanent planned living arrangement,” unless the state documents to the court a compelling reason why none of the other permanency options is in the child’s best interests.<sup>17</sup> The judge’s order should reflect the unique circumstances that make it impossible to achieve a more permanent and stable solution.

Although a judge will make the permanency decision at the permanency hearing, the actual placement is often not “finalized” at the hearing. When a court approves reunification, there may be stipulations or preconditions to finalizing the decision, such as requiring a father to complete an anger management class or the agreement of a mother to continue periodic drug screening following the child’s return. Similarly, when a court decides that adoption is in a child’s best interests, the child will often remain in foster care while the state files for termination of parental rights, identifies an adoptive family, or takes other necessary steps to finalize the adoption.

**Permanency review hearings:** Once a permanency decision has been made, there should be review hearings scheduled regularly and

promptly, until permanency is accomplished. These follow-up hearings are often pivotal to seeing the permanency decision through to completion. Like disposition review hearings, permanency review hearings allow judges to monitor and ensure overall compliance with the permanency plan.

It is during permanency review hearings that judges should strictly apply ASFA’s 15/22 rule. If parents cannot prove themselves capable of safe, responsible, permanent parenting within

this timeframe, then child-focused decision-making in the interests of the child require enforcement of the rule.

If reunification was the permanency decision, clear parental progress should have been made to return the child to the home before the first review hearing. If such progress is lacking, the court should seriously consider changing the permanency decision. Similarly, if adoption was the permanency

decision, the court should determine at the first review hearing whether the state has filed a petition for termination of parental rights, whether a termination of parental rights hearing has been scheduled, and whether the petition for adoption has been filed. If the state has not taken these steps, the court should order the caseworker to follow through with these child welfare system responsibilities, and the court should schedule another review hearing to be held within a matter of weeks.

*It is vital that those who care about foster children are familiar with how the permanency decision-making process should work, so they can monitor the system’s performance and fulfill their roles as advocates for children.*

17. Ibid.

The judge should also determine whether efforts are underway to identify an adoptive home for the child and whether appropriate training, screening, and paperwork completion has occurred. The court can and should take steps to promote efficient communication between the state foster care and adoption units, which are usually separate and distinct, to avoid unnecessary delays and expedite the adoption process.

## Challenges to Judicial Leadership

Courts face challenges to their efforts to ensure timely and safe permanency for foster children, including incomplete case details; inaccurate data; insufficient collaboration among stakeholders; crowded dockets without adequate time to devote to each case; insufficiently trained court staff, judges, and guardians ad litem;<sup>18</sup> and a lack of qualified attorneys for both parents and children. Judicial leaders constantly monitor how well their court system is operating and diagnose causes of delay and dysfunction in order to promote the most effective reforms.

Incomplete and inaccurate information is less likely to be a concern for courts that use efficient data systems, which share information within the child welfare system. Judges can

advocate for better data capabilities by partnering with child welfare officials and urging legislatures and executive branch officials to invest in modern and efficient information systems. Courts can also minimize the opportunity for inaccurate and incomplete court records by documenting pertinent case details upon receipt of information from parties and by recording judicial decisions at the time they are made.

The best case goal for a child will not be achieved without effective collaboration among child welfare caseworkers and managers, attor-

neys for all parties, guardians ad litem, families, and the courts. Regular meetings are a vital way to raise issues of concern before they become serious problems. Judges can spearhead a spirit of collaboration and the efforts needed to find permanency for children by ordering pre-trial conferences to be attended by the family, caseworker, attorneys, and guardian

ad litem. Discussion and cooperation are crucial to the smooth operation of the court as well as to the solving of practical problems, which can often be identified and solved at an early stage.

Finding adequate time to devote to each case will always be a challenge. The effective judge will impress upon all participants that deadlines and schedules are taken seriously. He will not grant continuances without serious cause.

*The court should set strict participation requirements that have a realistic prospect of enabling parents to achieve successful reunification.*

18. Guardians ad litem are appointed by the court to make recommendations to the judge about what is in the child's best interests. The guardian ad litem is not the child's attorney. One type of guardian ad litem is the Court Appointed Special Advocate (CASA). There are more than 900 CASA offices operating in 45 states, and a National CASA Association that supports state CASA programs and establishes standards that must be met for membership. The Pew Commission on Children in Foster Care recommends expansion of the CASA program.

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Judges can also require caseworkers, attorneys, and guardians ad litem to submit written reports sufficiently in advance of the hearing for review, which include a summary of the case progress with any recommendations about next steps, and additional detail as appropriate. This helps prepare the judge and bring her up-to-date before the hearing begins, which will expedite the process. Pre-trial conferences and similar pre-hearing, problem-solving efforts will facilitate a more efficient and effective hearing.

Court rules should adopt the “one judge-one family” model, according to which the same judge oversees a case from beginning to end. More time may be made on the docket by establishing a staggered courtroom schedule, and establishing the standard that each case has a set amount of time devoted to it.

Caseworkers, attorneys, guardians ad litem, judges, and court personnel need to receive comprehensive, ongoing training so they can perform their functions competently. Abuse and neglect cases are complicated matters that require an understanding of complex issues, such as healthy child development, the challenges of substance abuse, and constitutional guarantees. Court systems should establish and offer interdisciplinary workshops to instruct participants on a wide range of issues, including the most common causes of child abuse or neglect, recidivism, effective social services, and various challenges to the timely and permanent placement of children in foster care.

Ensuring adequate legal representation for the child welfare system, the parents or other caretakers from whom the child was removed, and guardians ad litem is also a challenge. Family courts and state bar associations are often unable to recruit and retain effective child abuse and neglect lawyers: expectations are high, case loads are excessive, and compensation is minimal. While there are national standards pertain-

ing to adequate legal representation in child abuse and neglect cases that have been established by both the American Bar Association and the National Association of Counsel for Children, compliance is inconsistent.

The judges NCFCA interviewed felt that chief justices and other influential judges should advocate for additional financial resources and other supports to enable attorneys to receive fair compensation and have more manageable caseloads. At the same time, judges should promulgate court rules that require the regular training, testing, and certification of family court attorneys. Judges must take into account an attorney’s experience and qualifications before appointing him to represent a child or parent in a particular case. Does this lawyer pursue continuing education in an area specific to family and child welfare cases? Does he or she attend trainings held at the court for child welfare specialists, caseworkers, and family court attorneys?

It is important to note that no amount of collaboration between the court and other stakeholders can or should impact the impartiality of the judge in his role as the decision-maker. Judges must evaluate every case individually and make the final determination as to what is in the child’s best interests, in accordance with the law. However, a judge cannot feel confident in these decisions without access to accurate information, confidence in the quality of legal and other representation afforded to children and parents, and the cooperation and coordination of the various parties involved.

Notwithstanding all these challenges, the effective judge makes no excuses, either for herself or for others in the system who are responsible for serving vulnerable children in foster care. As the legal authorities and superintendents of the child placement process, it is up to judicial leaders to produce excellent results for the children, no matter what the challenges.

## Essential Information for Sound Decision-making

To be an effective judicial leader, the juvenile and family court judge should routinely collect and evaluate information about case details and about all involved parties. Critical information is contained in the court file, the child welfare case plan, and reports of the parties. Judges should, of course, review the court file before each hearing. Depending on the stage of the case, the file may include petitions filed by one or more parties; court-required reports from the parties; previous court orders; relevant procedural documents, including hearing notices and service of process affidavits; and reports from physicians, psychologists, counselors, and teachers, as appropriate.

At the emergency removal hearing, the only information will likely be the emergency custody petition that identifies the reasons for removal. By the time of the adjudicatory hearing, the file should include additional documentation about the allegations of abuse or neglect, identification of all necessary parties, and documentation about efforts to locate and ensure representation of any missing parties who may have rights in the case.

Before making any decisions regarding case goals or permanency planning, judges should know the history and circumstances of the child and family, vis-à-vis court involvement. There may be prior court orders involving the child and family, whether abuse-related, neglect-related, or otherwise. A child may have a history of truancy, which is recorded in a separate court file. The information could be relevant to sound

disposition and permanency planning, but the court might be unaware of the history if the only information provided is the circumstances of the removal. Judges should also be aware of prior efforts to keep the family together, what was accomplished, and what is still to be carried out, some of which may appear in past petitions and orders.

Juvenile and family court judges should have ready access to the state agency's child welfare case plan before making any decisions about the best case goal, appropriate steps to realize the case goal, whether to change the case goal when determining or reviewing the permanency plan, and how to finalize permanency. The case plan should include social, psy-

chological, and medical screening and/or evaluations of the parents and child, as appropriate; a list both of needed services to achieve reunification and of available community resources to provide the needed services; documentation of services actually offered to the parents and other

details about the state's efforts to facilitate reunification; and evidence of early concurrent planning, in the event that reunification is not successful.

The child welfare case plan should outline the progress toward achieving the case goal and permanency plan, particularly with regard to the parents' progress. Are the parents attending the necessary parenting and anger management classes? Has the parent tested positive for drug use? Is the father visiting the child, as provided for in the court-approved case plan?

A judge also needs to be updated regularly

*With rare exceptions, the 12 months allowed by ASFA should be the upper limit for determining the permanency plan.*



on how the case plan is being implemented with respect to the child's well-being. How is the child adjusting to the foster family? How is the child doing in school? Has the child been permitted to visit her siblings? If visitation is not an option, what is this child's capacity to thrive without the attachments of the biological family? All of these factors could be relevant to the permanency decision. In the case of a child who is not adjusting to a foster-to-adopt family, an alternative foster family may be sought. In the case of a child with significant ties to his siblings, the information may help guide the judge in choosing the appropriate permanency option.

Unless the judge knows how the child is doing psychologically, medically, and academically, it will be difficult to ascertain whether the child's needs would be best served by the biological parent(s), or in an adoptive, or other, placement. It can be difficult to obtain precise and accurate information about the child's well-being. A judge must be relentless in asking about the child's well-being at every single hearing, with every single case, and not rely solely on the child welfare file or court record.

## Valuable Sources of Information

A child, especially an older child who has achieved a certain level of maturity, will be a primary source of information for a judge, and the judge should make a point of speaking to the child at every opportunity. In addition to the child, judges should gather information from a variety of sources in making decisions that affect children in foster care, particularly permanency decisions. Judges benefit immensely

from the information provided by the guardian ad litem, attorneys, foster family, and parents.

The role of a guardian ad litem is to make recommendations to the judge about what is in the best interests of the child. The competent guardian ad litem will not only know the child well, and have gained his or her confidence, she will have taken the time to interview the parents, other relatives, foster parents, teachers, doctors, and any other adults who have a significant relationship with the child. She will have visited the child's home, school, and foster placement setting on multiple occasions. Guardians ad litem can help articulate to the court the child's wishes as to permanency and provide the judges with valuable "context" to consider in making perma-

nency decisions. In most cases, the child will want to return home. The information gathered by the child's guardian ad litem through interviews, home visits, and school documentation will help the judge weigh the child's wishes against factors that affect his or

her safety and well-being.

Of all participants in a child abuse or neglect matter, attorneys are in an influential position to affect case progress, for better or worse. When attorneys make arguments to the court, provide written reports, and respond to a judge's questions, they will, if they have been trained and understand their duties, do so in a more informed and sophisticated manner than will the parties themselves. Attorneys can educate clients about relevant considerations and encourage appropriate collaboration with the other participants.

Though attorneys represent a particular party, their professional obligations and training

*It is during permanency review hearings that judges should strictly apply ASFA's 15/22 rule.*





require that they know the perspectives of all parties and the reasons behind these points of view. For example, attorneys for the state agency know and advocate for the caseworker's and case manager's wishes. But in doing so, the attorney should communicate with the parents' attorneys and the child's guardian ad litem. The judicial leader sorts through the various interests in play and makes her determinations based on the child's best interests.

Finally, a child's foster parents can provide valuable information to the court, information that should be taken into account in the judge's decision-making. The foster parents live with, observe, and interact with the child on a daily basis. They are the adults who spend the most time around the child during the permanency process. Foster parents will have a sense of the child's emotional well-being at school, at home, and before and after his visits with his biological parents. They can provide a wealth of information about the child, if asked to participate in the legal process.

## Importance of Judicial Decorum

The overall tone of the courtroom can be affected by a number of factors, including the judge's timeliness, consistency and ritual, high expectations, insistence on preparedness, and close, personal examination of all important issues. First and foremost, judges must afford all participants the same dignity and respect. At review and permanency hearings, when decisions must be made, a judge should be welcoming and

offer all parties, including the children, the opportunity to speak and answer questions.

The judge should be clear and consistent in articulating her requirements and deadlines, and can set the expectation of practice by establishing local court rules. When there is more than one judge in a jurisdiction, it is important to maintain consistency among the judges. Attorneys and other advocates will

become confused or miss deadlines if there is no uniformity of expectations among the members of the judiciary.

If a judge appoints a guardian ad litem or an attorney for any party, she should clearly explain that she expects excellence and initiative; she does not want them simply to "rubber-stamp" the agency's recommendations. They should appear in her court only after they

have familiarized themselves with the child's history, done the necessary research, and gathered all relevant information about the case.

Judicial leaders should require attorneys representing the parents and the state to hold pre-trial conferences in which the guardian ad litem and family participate. They should insist that attorneys enter the courtroom fully prepared to make arguments on their client's behalf. And they should expect guardians ad litem to be prepared to make recommendations as to what they believe is in the child's best interests, based on evidence they have gathered firsthand. To facilitate these preparations, the judicial leader should require all parties to provide written case updates in advance of the hearing.

*Notwithstanding all these challenges, the effective judge makes no excuses, either for herself or for others in the system who are responsible for serving vulnerable children in foster care.*



## Conclusion

In the Deficit Reduction Act of 2005, Congress recently enacted three positive initiatives to promote judicial leadership and improved court performance. These measures, which are supported by the National Council For Adoption and the Pew Commission on Children in Foster Care, are: \$50-million in new grants over five years for the establishment and use of performance measures for juvenile and family courts; \$50-million in new grants over five years to provide for training of judges, attorneys, and other personnel in child welfare proceedings; and new requirements that courts, agencies, and tribes demonstrate “substantial, ongoing, and meaningful collaboration” in administering child welfare services.

During the last decade, policies implemented at the state and federal levels have ushered in positive changes for children residing in foster care. However, with more than half a million children in foster care, with an average age of ten, there is clearly much more work to be done. As the legal superintendents and authorities over the child placement process, juvenile and family court judges are entrusted with the vital leadership responsibility of ensuring right and timely placements for children in foster care.

Judicial leadership is absolutely crucial to provide foster children with appropriate case goals and permanency plans, and to ensure a

just and timely permanency process that incorporates all the necessary information for sound permanency decisions. It is encouraging to see the growing enthusiasm and sense of urgency among many dedicated judges to serve this cause, as exemplified by Judges Salyers, Rideout, and FitzGerald.

## About the Judges

The Honorable Nancy Sidote Salyers has spent her entire legal career working on behalf of children and families in crisis. During her five years as presiding judge of the child protection division in Cook County, Illinois, she initiated and led an unprecedented model of collaboration and innovation with the Illinois Department of Children and Family Services. Her passion and hands on style are

evident in her work as a nationally recognized speaker on the topic of system reform and collaboration. Judge Salyers has received numerous awards for her results-oriented leadership, including the Jane Addams Award, National CASA Judge of the Year Award, and the Adoption 2002 Award for Judicial Excellence. She has served as trustee and as faculty for the National Council of Juvenile and Family Court Judges. Now retired from the bench, she co-directs Fostering Results, a national, nonpartisan education and outreach initiative funded by The Pew Charitable Trusts.

*With more than half a million children in foster care, with an average age of ten, there is clearly much more work to be done.*

- ◆ For more information on the subject of judicial leadership to ensure family and juvenile court best practices, see the National Council of Juvenile and Family Court Judges’ publication “Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases,” which is available on the NCJFCJ Website: [www.ncjfcj.org](http://www.ncjfcj.org).
- ◆◆ Nothing written here is to be construed as necessarily reflecting the views of the National Council For Adoption or as an attempt to aid or hinder the passage of any bill before Congress or a state legislature.

# Adoption Advocate

The Honorable Stephen Rideout retired from the bench in July 2004, after fifteen years as chief judge of the Juvenile and Domestic Relations District Court in Alexandria, Virginia. He was lead judge for the Alexandria Model Court, which was established in 1995 as part of the Child Victims Act Model Courts Project. Judge Rideout served on the National Council of Juvenile and Family Court Judges' board of trustees for three years. Judge Rideout has received several national awards for his service on the bench, including the 2004 National CASA Judge of the Year, the 2003 U.S. Department of Health and Human Services' Award of Excellence for Adoption, and the 2005 Mitch Windell Jurist Award from the AAICPC for his work on the Interstate Compact on the Placement of Children. Currently he is a consultant to a number of national organizations on juvenile and family court matters, including the American Bar Association, the National Drug Court Institute, and NCJFCJ.

The Honorable Richard FitzGerald is a senior judge of the Commonwealth of Kentucky, and has served as a district judge and special circuit judge since assuming the bench in 1975. He was assigned to the Kentucky Family Court Project in 1991, and served as chief judge of the project from 1995 to 2000. Judge FitzGerald has advised the National Association of Counsel for Children, the National Council of Juvenile and Family Court Judges' family violence department, and the Child

Welfare League Committee on Child Protective Service Standards. He has served on NCJFCJ's board of trustees, and is the past chairman of NCJFCJ's permanency planning committee. Judge FitzGerald has also served as adjunct faculty for the University of Louisville School of Law and for the NCJFCJ, and has been a visiting professor at the Child Law Center at Loyola University. He currently serves as a judicial educator and consultant to court improvement projects.

## Acknowledgement

The National Council of Juvenile and Family Court Judges published the referenced *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, cited above for best practices vis-à-vis the timing of hearings. NCJFCJ was founded in 1937 by a group of judges dedicated to improving the effectiveness of the nation's juvenile courts. The organization's mission is to "improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation's children and families." NCJFCJ publishes many "best practice" guidelines, bulletins, and manuals, and regularly provides technical assistance to court systems. NCJFCJ often collaborates with other juvenile and family court experts, such as the American Bar Association's Center on Children and the Law and the National Center for State Courts, to compile and disseminate useful research and publications.

*Founded in 1980, the National Council For Adoption (NCEA) is a research, education, and advocacy nonprofit whose mission is to promote the well-being of children, birthparents, and adoptive families by advocating for the positive option of adoption. For more information about NCEA policies and programs, visit our Web site at [www.adoptioncouncil.org](http://www.adoptioncouncil.org) or call toll-free 866-21-ADOPT.*



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